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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92048284
Party	Plaintiff Lipsy, Ltd.
Correspondence Address	GWENN ROOS LAW OFFICES OF GWENN ROOS 26 BROOKDALE AVE WELLESLEY, MA 02482-1021 UNITED STATES
Submission	Motion to Amend Pleading/Amended Pleading
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Date	11/06/2007
Attachments	lipsy amended pet. for cancellation.pdf (6 pages)(204363 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Lipsy Limited,)	
Petitioner,)	In the Matter of Trademark Reg.
)	No. 2,926,041
)	
)	Cancellation No. 92048284
v.)	
)	For the Mark: LIPSY
A.I.J.J. Enterprises, Inc.,)	
Registrant.)	Registered: February 8, 2005

AMENDED PETITION FOR CANCELLATION

Petitioner Lipsy Limited, a company organized and existing under the laws of the United Kingdom with a place of business located at 45-46 Berners Street, London, Great Britain W1T3NE, believes that it is or will be damaged by the above-identified registration, and hereby petitions to cancel the same pursuant to Section 14 of the Trademark Act of 1946 (the "Trademark Act"), as amended, 15 U.S.C. Section 1064. Grounds for cancellation are set forth below:

BACKGROUND

1. Petitioner offers a wide variety of clothing items under the trademark LIPSY and LIPSY DESIGNS, including clothing for children, teens, men and women.
2. Petitioner has been offering clothing under the LIPSY brand in the United Kingdom and throughout Europe since at least as early as 1989.
3. Petitioner has been manufacturing and distributing clothing under the LIPSY brand in the United States since at least as early as 1996.
4. Petitioner's LIPSY mark has become well known and famous

throughout the United States and Europe by virtue of Petitioner's longtime use of Petitioner's LIPSY trademarks, significant sales of goods bearing Petitioner's LIPSY trademarks and Petitioner's significant marketing, advertising and promotional efforts and expenditures in connection with Petitioner's LIPSY trademarks.

5. Registrant, A.I.J.J. Enterprises, Inc. ("Registrant") owns Trademark Registration No. 2926041 for LIPSY ("Registrant's Mark"), registered for "Women's, ladies and children's clothing, namely, sweaters, skirts, pants, shorts, tee shirts, underwear, cover-ups, jump suits, jumpers, jeans, pajamas, robes, sleepers, tops, shirts, blouses, newborn and infant wear, raincoats, scarves, hats, hoods, gloves, jackets, coats, socks, rompers, vests, shoes, ties, dresses, swimwear, lingerie, belts, sweatshirts, turtleneck shirts; and for body wear and exercise wear, namely, bathing suits, leotards, warm-up suits and sweatsuits." This registration has been cited by the United States Patent and Trademark Office as the basis for a Trademark Act Section 2(d) refusal of several of Petitioner's applications for registration of the LIPSY marks, namely, Serial Nos. 78/929417, 78/929418 and Serial No.78/929422, all for clothing. Accordingly, the Registrant's Mark is causing and will cause damage to Petitioner, by, among other things, interfering with Petitioner's right to use and register its LIPSY marks in connection with the above-identified goods.

FIRST GROUND FOR CANCELLATION

6. Petitioner owns senior and superior rights to the LIPSY trademark in the United States by virtue of Petitioner's use of the LIPSY trademark in commerce and interstate commerce in the United States in connection with apparel that pre-dates Registrant's use of the Registered Mark.

7. Pursuant to Section 2(d) of the Trademark Act Registrant is not entitled to registration of the Registrant's Mark because the concurrent use in commerce and registration of Registrant's Mark and Petitioner's LIPSY marks is likely to cause confusion or to cause mistake and/or to deceive.

SECOND GROUND FOR CANCELLATION

8. Petitioner owns senior and superior rights to the LIPSY trademark in the United States by virtue of the fame, notoriety and well-known quality of Petitioner's LIPSY trademark in the European Union as hereinbefore alleged that pre-dates Registrant's use of and/or application date for the Registered Mark.

9. Accordingly and alternatively, pursuant to Section 2(d) of the Trademark Act Registrant is not entitled to registration of the LIPSY mark because the concurrent use and registration of the LIPSY mark by Registrant and Petitioner is likely to cause confusion as to source, sponsorship and affiliation and/or to deceive.

THIRD GROUND FOR CANCELLATION

10. On information and belief, Registrant has procured the registration for Registrant's Mark by fraud perpetrated on the United States Patent and Trademark Office.

11. On information and belief, Registrant operates retail clothing outlets selling clothing brands of third parties, including Petitioner's LIPSY brand.

12. On information and belief, Registrant obtained its registration for Registrant's Mark by submitting specimens of Petitioner's product as proof of use of the mark in commerce. The specimens submitted by Registrant in connection with its registration of the Registered Mark depict the Registered Mark in stylized form that is

identical to the stylized form previously used by Petitioner prior to any use of the Registered Mark as alleged by Registrant.

13. On information and belief, and contrary to Registrant's statements made in connection with its application for registration of the Registered Mark, Registrant is not using the Registrant's Mark in interstate commerce as a source identifier for its products, but rather is selling Petitioner's products in its retail stores.

14. On information and belief, in connection with its trademark application for registration of Registrant's Mark, on or about October 16, 2003 Registrant submitted a declaration signed and sworn to by its Vice President Joseph Chehebar declaring that "he believes the applicant to be the owner of the trademark sought to be registered; to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the above-identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive" On information and belief, that statement was false when made and Registrant knew that statement to be false when made in light of Petitioner's prior use of Petitioner's LIPSY mark in the United States and the fame, notoriety and well-known quality of Petitioner's LIPSY mark in the European Union prior to Registrant's first use of the Registered Mark. On information and belief, that statement was made in bad faith with the express purpose of misleading the United States Patent and Trademark Office into issuing a registration to Registrant for the Registered Mark.

15. Accordingly and alternatively, Registrant is not entitled to

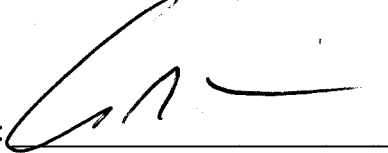
registration of the Registrant's Mark on the grounds that Registrant's Mark was procured by fraud.

WHEREFORE, Petitioner believes that it is damaged by Registration No. 2,926,041 and prays that the registration for Registered Mark be cancelled and for such other and further relief as the Trademark Trial and Appeal Board deems appropriate.

Petitioner requests that all communications be directed to Kane Kessler, P.C., Attention Adam Cohen, Esq., 1350 Avenue of the Americas, New York, New York 10025.

Dated: New York, New York
November 6, 2007

KANE KESSLER, P.C.

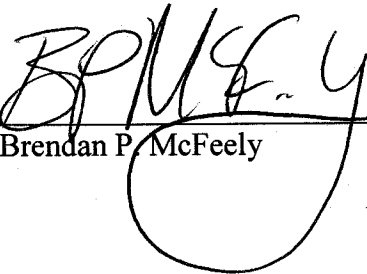
By: 

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CERTIFICATE OF SERVICE

The undersigned, hereby certifies that on the 6th day of November, 2007, a copy of the within Amended Petition for Cancellation was served upon the following by regular mail:

A.I.J.J. Enterprises, Inc.
100 Pennsylvania Avenue
Brooklyn, NY 11207


Brendan P. McFeely

Dated: November 6, 2007